BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of the	)	
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING	)	Case No. E97-98 A-0260-00f
v.	)	99-04
THE STANDARD REGISTER COMPANY,	)	
Respondent.	)	
---------- -	)	DECISION
ALLA TRIPOLSKY,	)	
Complainant.	)	

The attached Proposed Decision is hereby adopted as the Fair Employment and Housing Commission's final decision in this matter. Pursuant to Government Code sections 11425.60 and 12935, subdivision (h), the Commission designates this decision as precedential. We hereby correct a typographical error in the proposed decision; the case number in the caption should read E97-98 A-0260-00f, not C97-98 A-0260-00f. Commissioners Chough and Villicana have filed a concurring opinion.

We emphasize several points. First, complainant's request for leave to care for her son Maxim was entirely reasonable and valid under CFRA. CFRA clearly allows an employee to take a leave to care for a child with a lifetime condition such as Maxim Tripolsky's hearing loss. Indeed, the phrase "warrants the participation of the employee" (Gov. Code, §12945.2, subd. (j)(1)(D)) includes situations in which the employee provides psychological comfort or arranges third party care as well as directly providing or participating in the medical care of the family member. (Cal. Code of Regs., tit. 2,

§7297.0, subd. (a)(1)(D)(1).) Thus, complainant would have been within her CFRA rights to request time to arrange for third party care, or to find a new school for Maxim, just as she was within her rights to request leave to work on her child's speech development.

Second, we note that, unlike FMLA, CFRA does not give respondent the right to know the nature of Maxim's health condition, much less the kind of care complainant was going to provide for her son. (Gov. Code, §12945.2, subd. (j)(1).) Had respondent properly handled complainant's request for family care leave - by notifying her of her rights and providing her a medical certification form that conformed to CFRA's requirements - respondent might not have known the nature of Maxim's serious health condition, much less have overridden Dr. Aicardi's medical judgment. As it was, Dr. Aicardi's July 23, 1997, letter informed respondent of her total support for complainant's leave request, and explained that while Maxim did not have a "serious illness," he did have "a very serious condition which if not handled appropriately could result in harm to him." Instead of interpreting Dr. Aicardi's letter as a health care provider's attempt to certify a leave request, respondent seized on the portion of the letter saying that Maxim did not have a "serious illness" to deny complainant her leave. This was contrary both to the letter and spirit of CFRA.

Finally, we reiterate that, under CFRA, it is the health care provider, not the employer, who determines whether the family member (child, parent or spouse) has a "serious health condition" and whether the serious health condition "warrants the participation of the employee" during that family member's treatment or supervision. (Gov. Code, §12945.2, subd. (j); Cal. Code of Regs., tit. 2, §7297.0, subd. (a)(1).) Further, the employer is not allowed to second guess the health care provider's medical certification by requesting or imposing a second medical opinion. (Gov. Code, §12945.2, subd. (j); Cal. Code of Regs., tit. 2, §7297.4, subd.(b).) This is a critical difference between CFRA and FMLA.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523 and Code of Civil Procedure section 1094.5. Any petition for judicial review and related papers shall be served on the Department, the Commission, respondent, and complainant.

DATED: April 7, 1999

LYDIA I. BEEBE

PHYLLIS W. CHENG

EUIWON CHOUGH

ANN-MARIE VILLICANA

CONCURRING OPINION

We voted to adopt the proposed decision in this case, but would have been amenable to a higher award of compensatory damages for complainant's emotional injury.

We also wish to emphasize that employers with employees in California must follow CFRA. While there are many similarities between CFRA and FMLA, there are important differences as well. We would have been amenable to the imposition of an administrative fine to better communicate this message.

EUIWON CHOUGH

ANN-MARIE VILLICANA

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DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING	)	Case No. C97-98 A-0260-00f
v.	)	
THE STANDARD REGISTER COMPANY,	)	
Respondent.	)	
ALLA TRIPOLSKY,	)	PROPOSED DECISION
Complainant.	)	

Hearing Officer Caroline L. Hunt heard this matter on behalf of the Fair Employment and Housing Commission on November 23-24, 1998, in San Francisco, California. Jennifer Gittisriboongul, Staff Counsel, and Bill Smith, Law Clerk, represented the Department of Fair Employment and Housing. Susan Heaney, Esq., of Orrick, Herrington & Sutcliffe, represented respondent, The Standard Register Company. Complainant Alla Tripolsky was present for both days of hearing.

At hearing, the parties stipulated that under the California Family Rights Act (CFRA) (Gov. Code, §§12945.1 and 12945.2): 1) respondent meets the definition of a "covered employer" (Gov. Code, §12945.2, subd.(c)(2)); and 2) complainant was an "eligible employee" for purposes of CFRA leave at the time she requested a leave (Gov. Code, §12945.2, subd. (a)).

The parties both filed timely post-hearing briefs and the case was submitted on January 27, 1999.

After consideration of the entire record and all arguments of the parties, the Hearing Officer makes the following findings of fact, determination of issues, and order.

FINDINGS OF FACT

1 On September 2, 1997, Alla Tripolsky (complainant) filed a written, verified complaint with the Department of Fair Employment and Housing (Department) alleging that, within the preceding one year, Standard Register Company had denied her family care leave under the California Family Rights Act (CFRA), in violation of the Fair Employment and Housing Act (FEHA) (Gov. Code, §12900 et seq.). The complaint further alleged that Standard Register Company terminated complainant after her request for family leave was denied.

2 The Department is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h). On September 1, 1998, Nancy C. Gutierrez, in her official capacity as Director of the Department, issued an accusation against The Standard Register Company (respondent or Standard Register) alleging that respondent violated Government Code section 12945.2, by refusing to grant complainant her rights to family care leave to care for her son, who had a serious health condition, and by terminating her employment because she exercised her rights to such leave. The accusation also alleged that respondent violated Government Code section 12940, subdivision (i), by failing to take all reasonable steps to prevent discrimination from occurring.

3 On April 15, 1996, respondent hired complainant Alla Tripolsky as a Forms Designer, initially at a salary of $32,000 per year. Tripolsky had previous experience as a graphic designer, and a degree in graphic design from Platt College, in San Francisco. At some point, complainant received a raise. In July 1997, her annual salary was $34,000.

4 Respondent is an "employer," under Government Code section 12945.2, subdivision (c)(2)(A), and a "covered employer," within the meaning of California Code of Regulations, title 2, section 7297.0, subdivision (d).

5 In July and August 1997, complainant was an "eligible employee," qualified to take a CFRA leave under

Government Code section 12945.2, subdivision (a), and California Code of Regulations, title 2, section 7297.0, subdivision (e).

6 Complainant and her husband, Lev Tripolsky, have a daughter and a son. Their daughter, Gabriella, known as Gabi, was born in 1991. Gabi was born with a hearing disorder, bilateral sensori-neural hearing impairment, a condition which results from a genetic defect in the way the nerves transmit sound.

7 Complainant's son, Maxim, was born on May 22, 1995. When he was one month old, Maxim was also diagnosed with bilateral sensori-neural hearing impairment. Both Gabi and Maxim are severely hearing-impaired.

8. Dr. Eileen Aicardi is Gabi and Maxim Tripolsky's pediatrician. Dr. Aicardi obtained her medical degree from the University of California at San Francisco in 1974, was granted her medical license in 1975, and became board-certified in pediatrics in 1978. Dr. Aicardi also completed a two-year fellowship in ambulatory pediatrics in 1978.

9 Dr. Aicardi has practiced medicine in California for the past twenty years. She maintains her medical office, in partnership with other doctors, in San Francisco, and has a satellite office in Mill Valley. Her medical practice focuses entirely on pediatrics. As part of her medical practice, she has cared for hundreds of hearing-impaired children, including those who are severely hearing-impaired.

10 As a pediatrician, Dr. Aicardi is responsible for the care of "the whole child", and as part of that care, she refers her patients out for evaluation and testing, where appropriate. As the child's pediatrician and primary physician, she is responsible for supervising that child's medical treatment.

11 Dr. Aicardi has been Maxim's pediatrician since his birth and diagnosis with sensori-neural hearing impairment. She monitored his care and referred him for testing and treatment, including referrals to an ear, nose and throat doctor, and the technician who fitted his hearing aids. Dr. Aicardi was "in charge" of Maxim's medical care, working together with Maxim's audiologist, Katherine Reilly, M.A. Ms. Reilly referred test results, audiograms, and any unexpected findings back to Dr. Aicardi. There was a need to be especially vigilant with Maxim's care in the case of ear infections.

12 Complainant stayed in regular touch with Dr. Aicardi between Maxim's visits, often telephoning her to discuss Maxim's progress. Dr. Aicardi saw Maxim on July 15, 1997, around the time of complainant's request for family care leave.

13 Early childhood is a very important time for any child to hear speech and to learn how to develop it; in the case of a hearing-impaired child, like Maxim Tripolsky, it is an even more critical time for the acquisition of language.

14 Maxim Tripolsky's hearing loss is profound. His inability to hear has resulted in his failure to develop intelligible speech and language, by age two and continuing through the date of hearing. As a result, Maxim has been unable to communicate his needs to people who are not proficient in dealing with hearing-impaired children. Maxim's condition is "an ongoing, very serious disability/condition," which is incurable, barring technological breakthroughs.

15 Maxim was first fitted with hearing aids when he was approximately one year-old. The goal of the hearing aids was to maximize sounds for Maxim, but the aids did not mean that he could decipher the sounds he heard or understand what the sounds meant.

16 Once fitted with hearing aids, Maxim began attending Gallinas School in San Rafael, three days a week. Gallinas School provided Maxim with individual speech therapy, specialized training, and an environment designed to be protective of his needs.

17 Complainant's family situation is unusual in that she and her husband have two severely hearing-impaired children. Maxim's older sister Gabi is also a patient of Dr. Aicardi. Gabi had attended Gallinas School special education classes until she progressed so well with her speech development and language skills that she was "main-streamed" to regular elementary school classes.

18 Unlike his sister, Maxim's progress in speech development was not as hoped for. At the age of two, Maxim was unable to decipher sounds, or understand what they meant. With his hearing aids, Maxim could "record" sounds, but could not translate those sounds into meaningful language. At times, Maxim became frustrated because he could not communicate or express himself. Maxim's hearing impairment and lack of language development resulted in his needing continuing training to develop his speech abilities.

19 Maxim functioned well when at home with his parents or with his teachers, who were proficient in dealing with hearing-impaired children. However, he needed people around him to guide him, to hear and to speak for him, because he was otherwise unable to communicate his needs or to understand language.

20 Gallinas School was scheduled to close commencing in August 1997 for summer break. Complainant wanted to take a leave from her work, commencing in August 1997, to care for Maxim, to work on his speech and language skills by continuing his special training, to spend time with Maxim working on basic words and communication skills, and to help him with his "special needs" relating to his hearing impairment while his school was out of session. Complainant had previously worked extensively with her daughter, Gabi, in developing her oral skills. Complainant was concerned that, if she did not spend the time with Maxim while Gallinas School was closed, he would fall even further behind in his speech development.

21 Complainant's immediate supervisor at Standard Register was Rachel Apalit, respondent's regional operations manager. On or about July 11, 1997, complainant orally asked Apalit for leave to care for her son while his school was not in session. Apalit told complainant that she was not sure of the leave procedures and would need to talk to upper management. Apalit told complainant to put her request in writing and that she would forward the written request to her manager in Human Resources, Kristel Svansjo. At some point, Apalit also told complainant to get a letter from her son's doctor.

22 At all times relevant herein, respondent maintained a written family leave policy, and had a "medical certification" form for family care leave. Neither Apalit, Svansjo, nor anyone else at respondent ever gave complainant this policy or a copy of its "medical certification" form. No one from respondent told complainant what specific medical information she needed to provide to respondent to request family care leave.

23 On July 14, 1997, complainant submitted a written request to Apalit for a leave of absence. In her letter, complainant wrote:

> I am writing to request leave of absence (sic). The time that I would like to take time off will be from August 1st to October 1st. The reason for my absence

> is a very serious family situation: I have two small children, a daughter, 6 years old and a son 2 years old, who are both hearing impaired; both have severe hearing loss. When we found out about my daughter's hearing loss I had to stop working and spend a lot of time with her teaching her oral skills. Along with teachers at Special Education Class at Gallinas School in San Rafael, my daughter is doing very well and has been mainstreamed to the regular school now.
>
> My son has the same hearing problem, and I feel strongly that I need to (once again) take time to help my son with his special needs. Its (sic) important to do it as soon as possible because there is no school for him in the summer.
>
> I have been with Standard Register for 16 months and believe that I do a good job, and have made significant contributions to the San Francisco office.
>
> I hope management at Standard Register values my input to the company and will permit me to take "personal time off" or "family leave" (whichever my situation falls into). Unfortunately, if my reasons for taking time off will not be considered valid enough, I will have no choice but to leave Standard Register on August 1, 1997.

24 Complainant asked for two months' leave because she was not certain when her son's classes at Gallinas School were scheduled to resume. She intended her leave request to cover only the period Maxim was not in school.

25 Apalit forwarded complainant's written leave request to respondent's Human Resources Manager, Kristel Svansjo, who in turn forwarded it to corporate counsel, Kathryn Lamme, in Dayton, Ohio.

26 Kathryn Lamme reviewed complainant's request for family care leave and discussed it with Kristel Svansjo. Neither Svansjo nor Lamme ever spoke to complainant about her leave

request. Lamme concluded, based on complainant's letter and her discussion with Svansjo, that complainant's child was not suffering from a "serious health condition" within the meaning of the family care leave laws.

27 Respondent did not give complainant information on what medical documentation she needed to provide in support of her request for family care leave because respondent's representatives decided that her requested leave did not legally qualify for family care leave.

28 At some point during July 1997, in response to Rachel Apalit's request for a letter from Maxim's doctor, complainant told Dr. Aicardi that she needed a letter for her employer in support of her request for family care leave. On July 23, 1997, Dr. Aicardi wrote a letter to Apalit as follows:

> I am the pediatrician caring for Maxim Tripolsky. He is severely hearing impaired with limited speech. It is extremely important at this point in his life that he always be in an environment that is able to protect him. Unfortunately, such an environment does not exist for him and his family during the summer months. I totally support his mother's request for an unpaid family leave of absence. While this does not constitute a "serious illness," it is nonetheless a very serious condition which if not handled appropriately could result in harm to him.
>
> If there are further questions please do not hesitate to contact me.

29 Dr. Aicardi fully supported complainant's request for leave. Complainant had been extensively involved in Maxim's medical care, taking him to his appointments with Dr. Aicardi, taking him to his referrals to other practitioners, and working with his speech therapists at his school. In Dr. Aicardi's opinion, Maxim's health condition warranted complainant's participation in his care to reinforce his speech therapy while his school was out of session during the summer of 1997.

30 Katherine Reilly, Maxim's audiologist, also wrote a letter to Apalit, dated July 23, 1997, stating that, because of Maxim's hearing loss, he needed consistent, full time training,

and that, as his school would not be in session "for the next month or so," he would not get the "training and stimulation" he needed for his speech development.

31 On July 29, 1997, respondent denied complainant's request for leave. This was 18 days after her oral request of July 11, 1997, and 15 days after her July 14, 1997, written request. Respondent's stated ground was that complainant's son's hearing condition did not constitute a "serious health condition" entitling her to family care leave.

32 On July 29, 1997, complainant wrote to John Scarpelli, respondent's Human Resources Vice President, requesting reconsideration of the denial of her request for leave. Complainant attached the letters written on her behalf from Dr. Aicardi and Katherine Reilly, and a letter from an attorney, Michael S. Sorgen, dated July 25, 1997, stating his opinion that Maxim's condition qualified for leave under the Family and Medical Leave Act.

33 Kathryn Lamme, respondent's counsel, reviewed complainant's renewed request for family care leave and the supporting documentation, including Dr. Aicardi's letter.

34 On August 1, 1997, the Friday before complainant wanted to commence her family care leave, John Scarpelli sent complainant a memorandum informing her that her request for family care leave had been denied because her situation did not fall under the federal Family and Medical Leave Act or the California Family Rights Act.

35 That afternoon, on August 1, 1997, Rachel Apalit told complainant that her family care leave request had been denied, and asked for complainant's resignation. Apalit gave complainant a "personnel action form" to sign to submit her resignation. Complainant told Apalit that she was not resigning, and declined to sign the personnel action form. August 1, 1997, was complainant's last day of work with respondent.

36 Respondent's denial of complainant's family care leave terminated complainant's employment, effective August 1, 1997. Respondent subsequently filled complainant's position with another employee.

37 Gallinas School was out of session from the beginning of August 1997 until September 3, 1997. During that period, complainant stayed home with Maxim, working with him on his speech development and special needs. When Maxim's school

resumed, complainant spent time with Maxim's teachers, discussing his progress and the improvements he had made in certain vowel sounds.

38 Toward the end of September 1997, complainant started looking for employment. In the next eleven months, she sent out hundreds of resumes in response to newspaper employment advertisements in the San Francisco and San Jose areas, posted her resume on two web sites, contacted employment agencies, networked with friends, and went on interviews.

39 When complainant lost her job, she felt angry, disappointed, upset and frustrated. She cried often, and frequently felt snappish and emotional. At times she had trouble controlling her emotions, and took it out on her family. She frequently felt explosive anger and lost her temper, with her husband, their parents, her children and friends. Complainant's emotional upset had a very negative effect on her children, who did not understand what was going on.

40 Complainant had previously suffered from occasional migraine headaches; after the denial of her family care leave, these became much more frequent. She lost weight and her menstrual cycle changed. She had trouble sleeping, waking up during the night. She markedly increased her smoking. She was still suffering from stress-related symptoms a year after her termination, developing a nervous itch, which resulted in scabs on her scalp.

41 After losing her job, complainant and her husband started having problems. They argued over complainant's finding another job, and money issues.

42 Complainant's emotional distress continued throughout the entire period that she searched for work. Complainant felt frustrated and guilty that she was not able to find another job and contribute to the family's finances. At hearing, complainant was still emotionally upset and affected by respondent's denial of her family care leave.

43 Despite her job search efforts, complainant remained unemployed until mid-September 1998. She received unemployment benefits for four months of that period. The parties stipulated that complainant's job-search related costs from September 1997 to September 1998 totaled $1,856.27.

44 After receiving numerous rejections in her job search, complainant decided to go back to school to take computer

classes in software quality assurance. She started classes on September 14, 1998. The next day, complainant started a temporary full-time seasonal job at Tiffany and Company, earning $12.00 per hour, where she was still working as of the date of hearing.

DETERMINATION OF ISSUES

Liability

The Department alleges that respondent violated the California Family Rights Act1/ (CFRA) by denying complainant's request to take CFRA leave to care for her child, in violation of Government Code section 12945.2. Respondent argues that it did not violate CFRA because complainant's son did not have a "serious health condition" within the meaning of CFRA.

A. CFRA Leave Rights

It is an unlawful employment practice for a qualified employer to refuse to grant a request by an eligible employee to take up to a total of 12 workweeks in any 12-month period for "family care and medical leave." (Gov. Code, §12945.2, subd. (a).) Under CFRA, "family care and medical leave" includes:

> Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of the child of the employee. (Gov. Code, §12945.2, subd. (c)(3)(A).)

The CFRA statute and its implementing regulations, set forth at California Code of Regulations, title 2, section 7297 et seq., establish the procedures for the granting of CFRA leave. Under the CFRA regulations, "CFRA leave" means family care or medical leave taken pursuant to CFRA. (Cal. Code of Regs., tit. 2, §7297.0, subd. (b).) "Family care leave" includes leave of "up to a total of 12 workweeks in a 12-month period to care for a

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1/ The Act is properly cited as the Moore-Brown-Roberti Family Rights Act, but is commonly referred to as the California Family Rights Act, or CFRA. (Cal. Code of Regs., tit. 2, §7297.0, subd. (b).)

child, parent or spouse of the employee who has a serious health condition, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave." (Cal. Code of Regs., tit. 2, §7297.0, subd. (h)(2).)

Preliminarily, it is noted that respondent in this case failed to follow CFRA-mandated procedure in several important respects. For example, respondent failed to provide complainant with notice of her CFRA rights, failed to obtain further information regarding the reason for the requested leave to evaluate her leave request, and failed to respond to her leave request within 10 days, as required under the CFRA regulations. (Cal. Code of Regs., tit. 2, §§7297.4, subds. (a)(1), and (a)(6), and 7297.9, subd. (a).)1/

With that setting as a background, the issue for determination in this decision is whether respondent violated CFRA by denying complainant leave to care for her two year-old hearing-impaired son, Maxim, while his school was out of session during the summer.

1. Complainant's Qualification For Family Care Leave Under CFRA

At hearing, the parties stipulated that: 1) respondent is a CFRA "covered employer" (Gov. Code, §12945.2, subd. (c)(2); Cal. Code of Regs., tit. 2, §7297.0, subd. (d)); and 2)

2/ Respondent did not respond appropriately to complainant's oral request for leave on July 11, 1997. This oral request was sufficient to put respondent on notice that the requested leave potentially qualified under CFRA. (Cal. Code of Regs., tit. 2, §7297.4, subd. (a)(1).) Further, although respondent had a medical certification form, it did not give complainant a copy for her son's doctor to fill out. (Cal. Code of Regs., tit. 2, §7297.4, subd. (b)(1).)

complainant was an "eligible employee" for CFRA leave purposes at the time she requested the leave. (Gov. Code, §12945.2, subds. (a) & (b); Cal. Code of Regs., tit. 2, §7297.0, subds. (e), and (e)(3).) Also, it is undisputed that, under Government Code section 12945.2, subdivision (c)(1)(A), Maxim qualified as complainant's covered "child," as he was under age 18 at the time of the request for leave.

The Department contends that complainant qualified for CFRA leave on the basis that her son, Maxim, had a "serious health condition" because of his hearing impairment and lack of developed speech. (Gov. Code, §12945.2, subds. (c)(3)(A), and (c)(8); Cal. Code of Regs., tit. 2, §7297.0, subds. (a), and (o).) Thus, the Department argues, respondent violated Government Code section 12945.2 by denying complainant leave to care for Maxim while his school was out of session.

Respondent argues that complainant's son, "at most," had a disability, which did not qualify complainant for CFRA leave, as it did not constitute a "serious health condition."

a. Maxim's Medical Condition

CFRA defines "serious health condition" at Government Code section 12945.2, subdivision (c)(8):

> "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:
>
> (A) Inpatient care in a hospital, hospice, or residential care facility.
>
> (B) Continuing treatment or continuing supervision by a health care provider.

Dr. Eileen Aicardi testified at hearing both as Maxim's treating pediatrician and as an expert witness under Evidence Code section 801. She is a licensed medical doctor and board-certified pediatrician, who has practiced pediatrics in San Francisco and Marin for over twenty years, caring for numerous hearing-impaired children. Dr. Aicardi, as Maxim's pediatrician, clearly meets the definition of Maxim's "health care provider" under CFRA. (Gov. Code, §12945.2, subd. (c)(6)(A); Cal. Code of Regs., tit. 2, §7297.0, subd. (j)(1).)

Maxim suffers from bilateral sensori-neural hearing-impairment. The condition results from a genetic defect in the way the nerves transmit sound. Dr. Aicardi characterized Maxim's condition as "an ongoing, very serious disability/condition." The condition is incurable, barring technological breakthroughs.

Dr. Aicardi's uncontroverted testimony established that Maxim suffered from an "impairment" within the meaning of CFRA, by reason of his bilateral sensori-neural hearing impairment, resulting in severe hearing loss and lack of developed speech. (Gov. Code, §12945.2, subd. (c)(8).) The remaining issue is whether Dr. Aicardi provided Maxim with "continuing supervision" under Government Code, section 12945.2, subdivision (c)(8)(B).

Since Maxim's birth and diagnosis with the hearing impairment, Dr. Aicardi has monitored his care and referred him for testing and treatment, including referrals to an ear, nose and throat doctor, and to the technician who fitted his hearing aids. Dr. Aicardi was "in charge" of Maxim's care, working together with the audiologist, Katherine Reilly, M.A. As well as bringing Maxim to see Dr. Aicardi, complainant frequently telephoned Dr. Aicardi to discuss Maxim's progress between visits. Dr. Aicardi had seen Maxim on July 15, 1997, shortly before she wrote to respondent in support of complainant's request for leave.

Thus, the evidence established that Maxim suffered from a profound hearing impairment, and was under Dr. Aicardi's continuing supervision for the impairment. Therefore, Maxim had a qualifying "serious health condition" within the meaning of CFRA. (Gov. Code 12945.2, subd. (c)(8).)1/

b. Complainant's Request for Leave Triggered Respondent's Obligation to Inquire Further

When complainant initially requested leave to care for her hearing-impaired son, on July 11, 1997, she placed respondent on notice that her request for leave potentially qualified under CFRA. This notice triggered respondent's duty to "inquire further" if it required more information about the leave. (Cal. Code of Regs., tit. 2, §7297.4, subd. (a)(1).) When respondent

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3/ Respondent does not address the "continuing supervision" prong of CFRA's statutory definition of "serious health condition" in its argument at hearing or in its post-hearing brief.

received Dr. Aicardi's letter of July 23, 1997, respondent was specifically put on notice, verified by a doctor, that complainant's son was suffering from a "very serious condition," as he was "severely hearing impaired," and that "harm could result" to Maxim, absent the granting of complainant's leave request.

Respondent suggests that Dr. Aicardi's letter is insufficient to trigger complainant's CFRA rights. This, however, is simply incorrect. Under CFRA, the employer has the responsibility to ascertain any additional information needed to evaluate the leave request. (Cal. Code of Regs., tit. 2, §7297.4, subd. (a)(1).)1/ Given this, it is inconsistent with CFRA to allow an employer's inaction to justify a denial of leave. In the light of respondent's affirmative obligation to seek additional information, respondent cannot, in essence, punish complainant for her failure to provide additional information. (Cf. Cal. Code of Regs., tit. 2, §7297.4, subd. (a)(5).)

c. Under CFRA, the Health Care Provider Determines Whether There is a Serious Health Condition

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4/ Respondent incorrectly attempts to place on complainant the burden of fully explaining how her leave request qualified as family care leave. (Cal. Code of Regs., tit. 2, §7297.4, subd. (a)(1); cf. Mora v. Chem-Tronics, Inc. (S.D.Cal. 1998) 16 F.Supp.2d 1192 (district court case applying CFRA and the federal Family and Medical Leave Act, stating that once the employee gives notice of the need for potentially qualifying leave, the employer cannot improperly place the burden on the employee; the employer must inquire further as to whether family care leave is applicable.).

The CFRA statute expressly contemplates that the health care provider determines whether there is a "serious health condition." (Gov. Code, §12945.2, subd. (j); Cal. Code of Regs., tit. 2, §7297.0, subd. (a)(1).)1/ The health care provider need not even identify the serious health condition involved. (Cal. Code of Regs., tit. 2, §7297.0, subd. (a)(1).)1/

5/ Cases under the federal Family and Medical Leave Act (FMLA), 29 U.S.C. section 2601 et seq. and its implementing regulations, which can be looked to for guidance, are in accord. They make clear that, under federal law, it is the health care provider who decides whether a condition is a "serious health condition." (Cf. Sims v. Alameda-Contra Costa Transit Dist. (N.D.Cal. 1998) 2 F.Supp.2d 1253; Reich v. The Standard Register Company (W.D.Va.) 1997 WL 375744; Brannon v. Oshkosh B'Gosh, Inc. (M.D.Tenn. 1995) 897 F.Supp. 1028.) "The statutory scheme is designed to have medical determinations made by health care providers, rather than courts." (Sims v. Alameda-Contra Costa, supra, 2 F.Supp.2d at p. 1261.) "The FMLA contemplates that decisions of whether an employee has a 'serious health condition' will be made by doctors." (Id., at p. 1261, citing Reich v. The Standard Register, supra, 1997 WL 375744, at *2.)

6/ Under CFRA, a health care provider's written certification supporting a request for family care leave for the child, parent or spouse of the employee is conclusively sufficient if it provides the employer with:

> "(A) the date, if known, on which the serious health condition commenced; (B) the probable duration of the condition; (C) an estimate of the
>
> amount of time which the health care provider believes the employee needs to care for the child, parent or spouse and (D) a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse." (Gov. Code, §12945.2, subd. (j)(1); Cal. Code of Regs., tit. 2, §7297.0, subd. (a)(1).)

If the certification is sufficient, CFRA does not permit an employer to require a second or third certification in the case of leave to care for a child, parent or spouse. (Gov. Code, §12945.2, subd. (j)(1); Cal. Code of Regs., tit. 2,

Dr. Aicardi's testimony established that Maxim suffered a "very serious disability/impairment" that warranted his mother's leave from work to participate in Maxim's care during the summer of 1997, in order to reinforce his speech therapy and work on his language development.1/

Respondent argues that, notwithstanding Dr. Aicardi's testimony, complainant did not qualify for CFRA leave because Maxim was not "incapacitated" by his hearing impairment within the meaning of CFRA and FMLA. The Department, in addition to maintaining that Maxim's condition qualified under the "continuing supervision" prong of the CFRA statute, contends that the medical testimony established that Maxim was "incapacitated" by his hearing impairment and lack of speech development, within the meaning of the CFRA regulations. The Department is correct.

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§7297.4, subd. (b)(1).) **In this regard, CFRA is different than, and more protective of, employees' rights than FMLA. (25 C.F.R. §825.307.)**

7/ Respondent's argument that complainant did not qualify for family care leave because the purpose of the leave was "educational," is without merit, because Dr. Aicardi determined that complainant's participation in her son's care was warranted. Under the CFRA regulations, "'[w]arrants the participation of the employee' includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent or spouse, as well as directly providing or participating in, the medical care." (Gov. Code, §12945.2, subd. (j)(1)(D); Cal. Code of Regs., tit. 2, §7297.0, subd. (a)(1)(D)(1).)

Respondent looks to the FMLA regulations, in arguing that Maxim was not "incapacitated" and thus did not qualify as having a "serious health condition" within the meaning of CFRA.

The CFRA regulations state that a "serious health condition" means, inter alia, "continuing treatment or continuing supervision by a health care provider, as detailed in FMLA and its implementing regulations." (Cal. Code of Regs. tit. 2, §7297.0, subd. (o)(2).) FMLA, unlike CFRA, does not expressly include "continuing supervision" within its statutory definition of "serious health condition." The FMLA regulations do include "continuing supervision" within one of the definitions of "serious health condition," but do not define the term.1/ Thus, since the CFRA regulations incorporate the FMLA regulations only to the extent that they are not inconsistent with CFRA's statutory provisions (Cal. Code of Regs. tit. 2, §7297.10), the "period of incapacity" language from the FMLA regulatory definition, upon which respondent relies so heavily, must be read in a way that is consistent with the CFRA statute.1/

8/ The FMLA regulations include, as part of the definition of "serious health condition":

> A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease. (25 C.F.R. §825.114, subd. (iv).)

9/ **The Congressional Record establishes the intent that where the California law is more generous, it prevails:**

> **Mr. Becerra...[U]nder California law, once sufficient medical certification has been produced by an employee, an employer is not allowed to question the validity of the certification. An employer must grant the family leave unless she can successfully invoke an undue hardship defense. But under H.R. 1, up to three medical certifications may be required if the employer challenges the findings of the initial health care provider's certification. As you can see, California law in this area is more generous from the employee's standpoint than H.R. 1.**
>
> **Where these differences favor the employee, is it consistent with your intention that H.R. 1 would not**

Assuming arguendo that the Commission's reference to the FMLA definition of "serious health condition" in its CFRA regulations requires a showing of "incapacity" to qualify as a "serious health condition," Dr. Aicardi's medical testimony established that Maxim was incapacitated by virtue of his hearing impairment and the lack of a continuing protective environment of ongoing speech therapy and language training. His impairment was "permanent or long term" (25 C.F.R. §825.114, subd. (iv)) and would continue until Maxim was able to develop language, and communicate his needs.

d. Disability Does Not Preclude a Serious Health Condition

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supersede those provisions of California law?...

Mr. Ford of Michigan. Madam Chairman, I would say to the gentleman, yes, that is indeed the case. (Remarks of Rep. Becerra and Rep. Ford, 139 Cong. Rec. H396-03, H399 (Daily Ed. Feb. 3, 1993).)

Respondent's argument that a "disability" does not qualify for family care leave is without merit.1/ "Disability" and "serious health condition" are not mutually exclusive. Indeed, the Congressional history of FMLA reveals that parents of children with disabilities who need to take time off from work were intended to be covered by FMLA.1/

10/ Respondent argues that the omission of "hearing" impairment from the FMLA regulations is significant. However, the regulatory history reveals that the Department of Labor, in adopting the final regulations, chose not to adopt a "laundry list" of serious health conditions, because it "may lead employers to recognize only conditions on the list or to second-guess whether a condition is equally serious, rather than apply the regulatory standard." (Rules and Regulations, Dept. of Labor, Wage and Hour Div., (Jan. 6, 1995) 60 FR 2180-01, p. 29.)

11/ The Senate's debate on FMLA included the following colloquy:

Under the circumstances, the Department established by the preponderance of the evidence that complainant's son had a "serious health condition" within the meaning of CFRA and its implementing regulations, and that respondent's denial of complainant's request for family care leave constituted a violation of CFRA. (Gov. Code, §12945.2, subd. (a).)

2. Complainant's Termination

Mr. Harkin. Sometimes parents of children with disabilities need time off so that they can do such things as monitor and regulate medication levels before their child can safely return to school. Additionally, people with physical and mental disabilities sometimes experience certain conditions which may limit their abilities and require some time off to get the condition under control. Is it the intent of S.5 to cover such conditions?

Mr. Dodd. As I pointed out, it is the intent that such qualifying conditions be covered.
(Remarks of Sen. Harkin and Sen. Dodd, 139 Cong. Rec. S1334-01, S1348-49 (Daily Ed. Feb. 4, 1993).)

Respondent notified complainant that it denied her renewed CFRA leave request on August 1, 1997, the Friday before complainant needed to start her family care leave. John Scarpelli's memorandum stated that her request was denied because her situation did not fall under FMLA or CFRA. That same afternoon, complainant's supervisor, Rachel Apalit, informed complainant that her family care leave request had been denied, and asked for complainant's resignation. Apalit gave complainant a "personnel action form" to sign to submit her resignation.1/

Complainant declined to resign or to sign the personnel action form. Thereafter, complainant stayed home with Maxim, working with him on his speech development and special needs while Gallinas School was closed. Meanwhile, respondent filled complainant's position with another employee.

Respondent terminated complainant's employment by denying complainant's family care leave request on August 1, 1997. The termination was in violation of complainant's rights under CFRA. (Gov. Code, §12945.2, subd. (a); Cal. Code of Regs. tit. 2, §7297.1, subd. (a).)

B. Failure to Take All Reasonable Steps Necessary to Prevent Discrimination from Occurring

The Department asserts that respondent failed to take all reasonable steps necessary to prevent discrimination from occurring, in violation of Government Code section 12940, subdivision (i). Under this section, employers have an obligation to maintain policies and to undertake affirmative programs to prevent discrimination. (DFEH v. Right Way Homes, Inc. (1990) FEHC Dec. No. 90-16, at p. 13 [1990 WL 312877; 1990-91 CEB 5.1]; DFEH v. California State University-Hayward (1988) FEHC Dec. No. 88-18, at p. 19 [1988 WL 242650; 1988-89 CEB 6].)

Respondent failed to meet its notice obligations under CFRA. (Cal. Code of Regs., tit. 2, §7297.9, subd. (a)). Complainant did not see a posted notice regarding family care

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12/ The testimony at hearing was not clear whether Apalit gave Scarpelli's memorandum to complainant at the time of their meeting.

leave rights. None of respondent's witnesses testified that such a notice was posted.

Further, complainant testified that she was not aware of her rights of how to qualify for CFRA leave. Her supervisor was not familiar with the appropriate procedures. No one from respondent ever told complainant what information she needed to provide in support of her family care leave request or provided her with a medical certification form. Respondent contends that it did not provide complainant with her CFRA rights or its medical certification form because it already determined her lack of qualification for CFRA leave.

As discussed above, it was not within respondent's purview to make such a determination and it does not excuse its failure to notify complainant of her rights. Respondent's actions, under the facts of this case, constituted an independent violation of Government Code section 12940, subdivision (i).

Remedy

A. Make-Whole Relief

The Department seeks an order of back pay, reinstatement and/or front pay, out-of-pocket expenses, compensatory damages, an administrative fine, and a variety of affirmative relief.

1. Back Pay

Complainant is entitled to receive back pay for the wages she otherwise could have been expected to earn but for respondent's violation of the FEHA. Her rate of pay with respondent was $34,000 per year at the time of the denial of her leave and termination in August 1997. Complainant testified that after her termination, she stayed home to care of Maxim until he went back to school. Complainant started looking for a job toward the end of September 1997. Thus, complainant's back pay entitlement does not include the months of August or September 1997. The evidence established that complainant thereafter tried assiduously to find work, sending out hundreds of resumes. However, complainant was out of work for a year. On September 15, 1998, she started a full-time job with Tiffany and Company. Complainant's lost wages in the eleven and one-half months before starting work at Tiffany and Company, from September 1997 until mid-September 1998, calculated at the rate of $2,833 per month, were $32,580. Once she started at Tiffany and Company, where complainant earned $12.00 per hour or $480 per week, she earned

$174 per week less than at her job with respondent. Complainant is entitled to a back pay award representing that difference, which for the ten weeks from September 15, 1998, to the date of hearing, was $1,740.

Respondent suggests that any back pay award should be offset by complainant's unemployment insurance payments. Unemployment insurance benefits are not considered income and are not deducted from an award of back pay. (DFEH v. J. E. Robinson, D.D.S. (1993) FEHC Dec. No. 93-02, at p. 14 [1993 WL 726824; 1992-93 CEB 2], dec. affd., J. E. Robinson v. Fair Employment & Housing Com. (1992) 2 Cal.4th 226.)

Thus, this proposed decision awards complainant $34,320 in back pay. Interest will accrue on this amount, at the rate of ten percent per year, compounded annually, from the effective date the earnings accrued until the date of payment. (Code of Civ. Proc., §685.010; (DFEH v. J.E. Robinson, D.D.S., supra, 1992-93 CEB 2, at p. 15.)

2. Reinstatement and Post-Hearing Back Pay

In the accusation, the Department asks for complainant's reinstatement, or front pay in lieu thereof. Under the circumstances, this proposed decision orders that respondent offer complainant reinstatement into her former position as a Forms Designer, or a substantially comparable position, and to grant her all seniority, status, and other terms, conditions and privileges of employment that would have accrued to her had she not been terminated. Complainant shall have 10 days from the date of respondent's offer of reinstatement to accept or reject reinstatement. Respondent shall also make complainant whole for her continuing wage loss from November 24, 1998, until she is reinstated, refuses an offer of reinstatement, or achieves and maintains equivalent earnings. (DFEH v. Centennial Bank (1987) FEHC Dec. No. 87-03 [1987 WL 114851; 1986-87 CEB 6].)

3. Compensatory Damages

The Commission has the authority to award actual damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount not to exceed, in combination with any

administrative fines imposed, $50,000 per aggrieved person per respondent. (Gov. Code, §12970, subd. (a)(3).) In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the Commission considers relevant evidence of the effects of discrimination on the aggrieved person with respect to: physical and mental well-being; personal integrity, dignity, and privacy; ability to work, earn a living, and advance in his or her career; personal and professional reputation; family relationships; and, access to the job and ability to associate with peers and coworkers. The duration of the injury and the egregiousness of the discriminatory practice are also factors to be considered. (Gov. Code, §12970, subd. (b); DFEH v. Aluminum Precision Products, Inc. (1988) FEHC Dec. No. 88-05, at pp. 10-14 [1988 WL 242635; 1988-89 CEB 4].)

At hearing, complainant testified credibly and convincingly that she experienced emotional pain and suffering as a result of the denial of CFRA leave and termination of her employment. Complainant testified that she had trouble sleeping, waking up during the night. She had previously occasionally suffered from migraine headaches; after her termination, these became much more frequent. She lost weight. Her menstrual cycle changed. Her smoking increased. She developed a nervous itch, resulting in scabs on her scalp, which she attributed to stress-related symptoms still continuing a year after her termination.

Complainant testified that she was angry and frustrated by respondent's denial of her request for family care leave and cried often. She felt snappish and emotional, and had trouble controlling her emotions. She testified that she frequently felt explosive anger.

Complainant's husband Lev Tripolsky testified credibly and convincingly that complainant was very upset at her termination. He testified that, after her termination, he noticed changes in complainant, including her anger, frustration, emotional outbursts, and crying. Lev Tripolsky testified that complainant began losing her temper, with him, their children and their parents and friends. He testified that complainant's emotional upset had a very negative effect on their children. The children did not understand what was going on. He also noticed complainant's weight loss, and her itching at her neck and shoulders for no apparent reason.

Both complainant and her husband testified that they started having arguments leading to problems in their marriage. They argued over complainant's finding another job, and money issues.

Complainant's emotional distress resulting from respondent's denial of leave and termination continued throughout the entire year that she searched for work. Complainant felt frustrated and guilty that she was not able to find another job and contribute to the family's finances. At hearing, complainant's demeanor and bearing indicated that she was still emotionally upset and affected by how she had been unfairly treated by respondent. Thus, the denial of CFRA leave impacted both complainant's physical and mental well-being.

Considering the facts of this case in light of the factors set forth in Government Code section 12970, subdivision (a)(3), and the duration of her injury as set forth in Government Code section 12970, subdivision (b), respondent will be ordered to pay complainant $30,000.00 in damages for her emotional distress. Interest will accrue on this amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment. (Code of Civ. Proc., §685.010.)

4. Out-of-Pocket Expenses

The parties stipulated that complainant's job search-related expenses totaled $1,856.27. Complainant is entitled to reimbursement for this amount, together with interest, compounded annually, from the effective date of this decision. (Code of Civ. Proc., §685.010; DFEH v. J. E. Robinson, supra, 1992-93 CEB 2, at p. 15.)

The Department also seeks an award for complainant's costs for returning to school to take computer classes, commencing in September 1998. However, as complainant started a new job at the same time she began her schooling, the Department did not establish that the educational costs were sufficiently related to her termination.

B. Administrative Fine

The Department stated at hearing that it seeks an order of an administrative fine, not for respondent's denial of complainant's CFRA leave, but solely for respondent's failure to post notices of its employees' right to request CFRA leave. (Cal. Code of Regs., tit. 2, §7297.9.) The remedy for a violation of section 7297.9, however, is an order that respondent post the appropriate CFRA notice. (Cal. Code of Regs., tit. 2, §7297.8.) Thus, this proposed decision does not order an administrative fine.

C. Affirmative Relief

The Department asks that respondent: 1) be ordered to develop, implement, and post a CFRA policy; 2) conform its existing family care leave policies to the requirements of Government Code section 12945.2; 3) circulate its CFRA policy to all of respondent's employees; 4) provide CFRA training for all respondent's managers and supervisors; and, 5) order any further relief that the Commission deems appropriate. Where suitable, these additional forms of relief are authorized by the Act. (Gov. Code §12970, subd. (a)(5).)

Respondent is ordered to post a copy of the Commission's notice regarding CFRA leave. (Cal. Code of Regs., tit. 2, §7297.9, subd. (d).) (Attachment A.) Respondent is also ordered to conform its existing family care leave policies to the requirements of Government Code section 12945.2, to circulate that policy to its California employees, and to provide training for its California managers and supervisors. Further, respondent is ordered to post a notice acknowledging respondent's unlawful conduct (Attachment B).

ORDER

1. Respondent The Standard Register Company shall immediately cease and desist from denying its employees their rights under the California Family Rights Act, Government Code section 12945.2.

2. Within 60 days of the effective date of this decision, respondent The Standard Register Company shall pay to complainant Alla Tripolsky back pay in the amount of $34,320 for lost wages for the period from September 30, 1997, until September 14, 1998. Respondent shall also pay ten percent per year interest on this amount, running from the date the earnings accrued, and compounded annually, until the date of payment.

3. Within 20 days of the effective date of this decision, respondent The Standard Register Company shall offer complainant reinstatement into her former position as a Forms Designer, or at a substantially comparable position.

Complainant shall have 10 days from the date of respondent's offer of reinstatement to accept or reject reinstatement. Upon complainant's acceptance, she shall be reinstated immediately, with all seniority, status and other terms of employment that would have accrued to her had she remained in respondent's employment.

4. Within 60 days of the effective date of this decision, respondent The Standard Register Company and the Department shall attempt to reach agreement on the amount owed complainant as post-hearing back pay during the period from November 24, 1998, through the date on which complainant accepts or refuses the offer of reinstatement made in compliance with section 3 of this Order, together with interest on this amount, calculated at the rate of ten percent per year, running from the date the earnings accrued, and compounded annually, until the date of payment. The parties shall, within 70 days of the effective date of this decision, report the agreed amount to the Commission for its approval, or report their failure to agree. Respondent shall pay the agreed amount within 10 days after the Commission approves it, and verify said payment to the Commission in writing. If respondent and the Department do not reach agreement, or the Commission does not approve, this element of the damages award shall be returned for further hearing.

5. Within 60 days of the effective date of this decision, respondent The Standard Register Company shall pay to complainant Alla Tripolsky compensatory damages for emotional distress in the amount of $30,000, together with interest on this amount running from the effective date of this decision to the date of payment and compounded annually at the rate of ten percent per year.

6. Within 60 days of the effective date of this decision, respondent The Standard Register Company shall pay to complainant Alla Tripolsky $1,856.27 for out-of-pocket expenses, together with interest on this amount, running from the effective date of this decision until the date of payment and compounded annually at the rate of ten percent per year.

7. Within 10 days of the effective date of this decision, an authorized representative of respondent The Standard Register Company shall sign and post clear and legible copies of notices conforming to Attachments A and B. Copies conforming to Attachments A and B shall be posted in respondent's California offices where its employees will see them and where applicants for jobs obtain or file applications for employment. Posted copies of these notices shall not be reduced in size, defaced,

altered, or covered by other material. The notice conforming to Attachment B shall be posted for a period of 90 working days. All copies conforming to Attachment A shall be posted permanently. In addition, respondent shall give a copy of Attachment A to all California employees.

8. Within 60 days after the effective date of this decision, respondent The Standard Register Company shall conduct a training program for all of its California managers and supervisors on its CFRA-leave policy. Respondent shall utilize Attachment A and the Commission's CFRA regulations (Cal. Code of Regs., tit. 2, §§7297.0 to 7291.11, inclusive) for the training.

9. Within 70 days after the effective date of this decision, an authorized representative of respondent The Standard Register shall, in writing, notify the Department and the Commission of the nature of its compliance with paragraphs two through eight of this order.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523 and Code of Civil Procedure section 1094.5. Any petition for judicial review and related papers should be served on the Department, Commission, respondent, and complainant.

Dated: March 29, 1999

Caroline L. Hunt
Hearing Officer

Attachment A

FAMILY CARE AND MEDICAL LEAVE (CFRA)
AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.

Even if you are not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA-eligible, you have certain rights to take BOTH a

pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under the law.

If possible you must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or of a family member). For events which are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave.

Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy or your own serious health condition or certification from the health care provider of your child, parent, or spouse who has a serious health condition before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or a reduced work schedule.

If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact _____.
You may receive copies of the regulations regarding CFRA and pregnancy disability leave by contacting the Fair Employment and Housing Commission at (415) 557-2325.

Dated:

_____

[Authorized Representative for The Standard Register Company]

Attachment B

The Standard Register Company

NOTICE
to
ALL EMPLOYEES AND APPLICANTS of THE STANDARD REGISTER in CALIFORNIA

posted by Order of the
FAIR EMPLOYMENT AND HOUSING COMMISSION
an agency of the State of California

After a full hearing, the California Fair Employment and Housing Commission has found that The Standard Register Company is liable for a violation of the California Family Rights Act (CFRA) (Government Code section 12945.2, subd. (a)), for failing to grant an employee CFRA leave for her child's serious health condition. (DFEH v. The Standard Register (1999) FEHC Dec. No. 99-__.)

As a result of the violation, The Standard Register Company has been ordered to post this notice and to take the following actions:

1. Cease and desist from discriminating against its employees or applicants for exercising their rights under CFRA.

2. Pay the former employee back pay and compensatory damages for emotional distress.

3. Reinstate the former employee to her original or a comparable position.

4. Post a statement of employees' and applicants' rights and remedies regarding CFRA, and conduct a training about these rights.

Dated: _____ By: _____
Authorized Representative for The Standard Register Company

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN POSTED FOR NINETY (90) CONSECUTIVE WORKING DAYS FROM THE DATE OF POSTING AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.